IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 239 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALA ENGINEERING WORKS THROUGH SHAVJIBHAI P JOSHI - Appellant(s)

Versus

STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :

MR HARSHAD K PATEL for Petitioner No(s).: 1.
MR KC SHAH ADDL PP for Respondent No(s).: 1.
MR MB RANA for VH KANARA for Respondent No(s).: 2.

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CORAM : HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date : 10/08/2005

ORAL JUDGMENT

1.Heard Shri Patel, learned advocate for the appellant and Shri K.C. Shah, learned Addl.P.P. for the State and Mr. M.B.Rana for respondent No. 2.

2. This appeal under Section 378 of the Code of Criminal

Procedure challenging the order of trial Court dated 19.8.2003 dismissing the complaint and acquitting the accused under Section 256 of the Code of Criminal Procedure on the ground that the complainant had not remained present nor any application for time was submitted on his behalf.

3. This court has granted leave and admitted the appeal after hearing the advocates of the respective parties. Looking to the nature of the order, the matter was fixed for final disposal on 15.7.2005 vide order dated 8.7.2005. Learned advocate Mr. J.M. Buddhabhatti for respondent No. 2 and Mr. K.C. Shah, learned Addl.P.P. for respondent No. 1 had waived notice of admission.

4. This court has perused the record and proceedings. It appears that impugned order came to be passed on 19.8.2003 when even the accused had made an application through his advocate seeking exemption for remaining present on that day, which seems to have been granted as it appears from the order passed below Ex.40. The proceedings and record indicate that reasoning adopted by the learned trial Court for dismissing the complaint are erroneous and uncalled for.

5. The complaint was required to be proceeded after affording opportunity to respective parties. In view of this, this court is of the view that in the interest of

justice, the impugned order dated 19.8.2003 deserves to be quashed and set aside and the matter deserves to be remanded back to the trial Court for deciding the matter on merits. Accordingly, the impugned order dated 19.8.2003 passed in Criminal Case No. 5483 of 1998 is hereby quashed and set aside and the appeal stands partly allowed to the aforesaid extent. The matter is remanded back to the trial court for proceeding further in accordance with law. The registry is directed to send the R&P to the trial Court forthwith for deciding the matter on merits.

(S.R.BRAHMBHATT, J.)

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